

# DEC Request for Adjudicatory Hearing Form Pursuant to 18 AAC 15.200

A request for adjudicatory hearing must be submitted using this form and timely served upon the Commissioner by electronic mail or U.S. mail (see 18 AAC 15.200(a), (c) and (e), as well as on the division that issued the decision and the permittee. Attn: Emma Pokon, Commissioner -Alaska Department of Environmental Conservation  
P.O. Box 111800  
Juneau, AK 99811-1800 or DEC.Commissioner@alaska.gov

### Air Quality

Jason Olds, Director  
Dept. of Env. Conservation  
P.O. Box 111800 Juneau,  
AK 99811-1800 Fax: (907)  
465-5129  
Jason.Olds@alaska.gov

### Spill Prevention &

**Response** Teresa Melville-  
Acting Director  
Dept. of Env. Conservation  
555 Cordova Street  
Anchorage, AK 99501  
Fax: (907) 269-7654  
[Teresa.Melville@alaska.gov](mailto:Teresa.Melville@alaska.gov)

### Environmental Health

Christina Carpenter, Director  
Dept. of Env. Conservation  
555 Cordova Street  
Anchorage, AK 99501  
Fax: (907) 269-7654  
Christina.Carpenter@alaska.gov

### Water

Randy Bates, Director  
Dept. of Env. Conservation  
P.O. Box 111800  
Juneau, AK 99811-1800  
Fax: (907) 269-7509  
Randy.Bates@alaska.gov

## Requestor Contact Information

Name*	Jim and Nancy Oliver	Telephone*	907-277-5767
Address*	8050 S. Alix Drive Wasilla, Alaska 99623	Fax	
		Email Address	swi@mtaonline.net
		Date	1/29/24

Please provide the name(s), mailing address(es), electronic mail address(es) and telephone number(s) for the individual(s) or organization(s) bringing forward this request for adjudicatory hearing ( see 18 AAC 15.200(c) and 18 AAC 15.920(13))

\*Required

## Identification of Represented Parties

For each requester named above that is a member organization, please provide the names and addresses of members who are adversely affected by the decision who are being represented by the organization in this matter (see 18 AAC 15.200(c)(3))

We, the following individuals, are directly and adversely affected by the decision(s) being sought for review.

Jim Oliver  
8050 S. Alix Drive  
Wasilla, Alaska 99623

Nancy Oliver  
8050 S. Alix Drive  
Wasilla, Alaska 99623

Additionally, the numerous clients that we service may also be adversely affected. These include clinics, funeral homes, fire stations, and a contract with the State's Crime Lab.

Please identify the permit or other decision you are seeking to have reviewed. Please include information such as **the date of the decision**, who made the decision, the title of the document within which the decision is contained or the permit number. **The requester bears the burden of presenting evidence in the hearing request. If the decision is not available on the department's web pages, please provide an electronic copy of the decision document.** If the department provided an opportunity for public comment on the permit, approval or decision, you must have provided comments during the public notice period or commented at a public hearing regarding the permit, approval or decision. Please also identify where you commented on the issues being appealed.

The following information identifies the source of the decisions being sought for review.

Date of decision: 1/2/24

Person who made the decision: Robert Blakenburg, Solid Waste, Hazardous Waste, & Pesticides Program Manager

Title of applicable document: Notice of Denial - Safety Waste Medical Waste Treatment Permit

\*\*See the accompanying document titled "Permit Denial\_2024Jan2"

**Issues to be Decided**

Please provide the following information for each question of material fact or law (collectively referred to as "contested issues" you are asking to be reviewed as part of the adjudicatory hearing request. Attach additional pages as needed if you are seeking to raise more than three issues or if you need more space for your response relating to an issue.

Please reference the following 3 issues of contention listed on this form and an additional 6 more listed on the accompanying document titled "Supplemental Listing of Contested Issues".

Contested Issue and Location of the Issue

Whether or not it was accurate and truthful for Mr. Blakenburg to say, in his letter of 1/2/24, that there was no evidence observed or received to show that SWI was in compliance with the active permit at the time of his letter.

\*\*See the accompanying document titled "Permit Denial\_2024Jan2".

Explanation and reasons the contested issue is relevant to the decision

The DEC Letter of 1/2/24 indicates that a history of noncompliance with the permit is part of the reason to stop the process of permit renewal.

How are requesters directly and substantively affected?

The stopping of the processing of permit renewal effectively deprives us of our livelihood and how to pay bills and support our family, as we have done with our waste treatment and disposal business for the past 30 years of our lives.

Any suggested terms or conditions?

Allow us the opportunity to proceed with the process of permit renewal.

Why should your request be granted?

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.

Contested Issue 1

- a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))
- b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)
- c) An explanation of how the decision was in error with respect to the contested issue
- d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)
- e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or
  - 1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):
  - 2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
  - 3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above
- f) Identify when and where you raised this issue in testimony or comments you provided to DEC. If your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)\*\*
- (g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.
- (h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.
- (i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))

\*\* this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue and location of the Issue

Whether or not it was accurate and truthful for Mr. Blakenburg to say, in his letter of 1/2/24, that the purpose of the COBC of 4/5/23 was to help SWI come into compliance with their permit and the regulations, and whether or not the design, implementation, and monitoring of compliance with the active permit reflects the stated purpose.

\*\*See the accompanying document titled "Permit Denial\_2024Jan2".

Explanation and reasons the contested issue is relevant to the decision

The DEC Letter of 1/2/24 indicates that a history of noncompliance with the COBC is part of the reason to stop the process of permit renewal.

How are requesters directly and substantively affected?

The stopping of the processing of permit renewal effectively deprives us of our livelihood and how to pay bills and support our family, as we have done with our waste treatment and disposal business for the past 30 years of our lives..

Any suggested terms or conditions

Allow us the opportunity to proceed with the process of permit renewal.

Why should your request be granted?

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.

Contested Issue 2

- a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))
- b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)
- c) An explanation of how the decision was in error with respect to the contested issue
- d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)
- e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or
  - 1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);
  - 2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
  - 3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above
- f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC15.245)\*\*
- g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.
- h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.
- i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))  
\*\* this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either
  - 1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or
  - 2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested issue and location of the issue

Whether or not the DEC's Decision of 1/2/24 represents a fair and equal application of instructions and rules for permit renewal, with these written or verbally conveyed in clarity, with no ambiguity.

\*\*See the accompanying document titled "Instructions and Rules for Permit Renewal"

Explanation and reasons the contested issue is relevant to the decision

The DEC Letter of 1/2/24 indicates that interpretation and application of rules is part of the reason to stop the process of permit renewal.

How are requesters directly and substantively affected?

The stopping of the processing of permit renewal effectively deprives us of our livelihood and how to pay bills and support our family, as we have done with our waste treatment and disposal business for the past 30 years of our lives.

Any suggested terms or conditions?

Allow us the opportunity to proceed with the process of permit renewal.

Why should your request be granted?

So that the processing of permit renewal continues in an equitable manner, there is no denial of due process, and the State refrains from the taking of one's livelihood and the prohibited act of impairing contractual obligations, in accordance with Article 1, Sections 1 and 7 and 15 of the Alaska Constitution.

**Contested Issue 3**

**a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))**  
**b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)**

**c) An explanation of how the decision was in error with respect to the contested issue**

**d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)**

**e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review: more specifically, please include a discussion or**

**1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):**

**2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and**

**3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above**

**(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. If your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC15.245)\*\***

**(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.**

**(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.**

**(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))**

**\*\* this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.**

**NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.**

**Request for Evidentiary Hearing**

With reference to the number of issues listed in your response to "Issues to be Decided" above, please list the number of the issues for which you are requesting an evidentiary hearing that may involve the testimony of factual witnesses, expert witnesses or the offering of additional documents or other evidence not already in the existing agency record.

**Description of Question of Fact to be Raised at an Evidentiary Hearing**

With reference to the number of issues listed in your response to "Request for Evidentiary Hearing" above, please describe each of the factual issues you want considered in an evidentiary hearing. You may reference you answers in you response above if they describe all the questions of fact that you want considered at an evidentiary hearing

**Estimated Time for an Evidentiary Hearing**

Please provide your estimate of the time you think will be needed to conduct the evidentiary hearing you are requesting.

**IF YOU HAVE QUESTIONS**

If you have questions regarding what information needs to be included in this form or questions about the process for requesting an adjudicatory hearing, you may find help by:

1. Reviewing the department's regulations, many of which are referenced in this form. The Administrative Procedures regulations at 18 AAC 15 are available on the Internet at <https://dec.alaska.gov/commish/regulations/> . The definitions of key terms may be found at 18 AAC 15.920.
2. Reviewing the guidance documents posted by the department at <https://dec.alaska.gov/commish/review-guidance/>; or
3. Contacting the department's adjudicatory hearing liaison, Gary Mendivil, in the Commissioner's Office at (907) 465-5061 or at [Gary.Mendivil@alaska.gov](mailto:Gary.Mendivil@alaska.gov)

**Please be aware that failing to comply with the requirements for filing and serving a request for adjudicatory hearing could result in all or a portion of your request being denied.**

**APPLICABLE DEADLINES**

Requests for an adjudicatory hearing must be made not later than 30 days after the issuance of the department's decision or permit, or not later than 30 days after the issuance of a decision on a request for informal review under 18 AAC 15.185, whichever is later. (see 18 AAC 15.200(a))

## **Supplemental Listing of Contested Issues**

### **Contested Issue 4:**

#### **Contested Issue and Location of the Issue**

Whether or not it was accurate and truthful for Mr. Blakenburg to say, in his letter of 1/2/24, that the first required submission under the COBC was not in compliance with the regulations.

\*\*See the accompanying document titled "COBC Corrective Actions\_2023April28".

#### **Explanation and reasons the contested issue is relevant to the decision**

The DEC Letter of 1/2/24 indicates that a history of noncompliance with the COBC is part of the reason to stop the process of permit renewal.

\*\*See the accompanying document titled "Permit Denial\_2024Jan2".

#### **How are requesters directly and substantially affected?**

The stopping of the processing of permit renewal effectively deprives us of our livelihood and how to pay bills and support our family, as we have done with our waste treatment and disposal business for the past 30 years of our lives.

#### **Any suggested terms or conditions?**

Allow us the opportunity to proceed with the process of permit renewal.

#### **Why should your request be granted?**

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.

## **Contested Issue 5:**

### **Contested Issue and Location of the Issue**

Whether or not it was accurate and truthful for Ms. Carpenter to say, in her letter of 1/12/24, that it remains discretionary upon an agency to request further information from a permit applicant after determining further information is necessary.

\*\*See the accompanying document titled "Informal Review Decision\_2024Jan12".

### **Explanation and reasons the contested issue is relevant to the decision**

The DEC Letter of 1/12/24, as well as the DEC Letter of 1/2/24, indicates that interpretation and application of rules is part of the reason to stop the process of permit renewal.

\*\*See the accompanying documents titled "Informal Review Decision\_2024Jan12" and "Permit Denial\_2024Jan2".

### **How are requesters directly and substantially affected?**

The stopping of the processing of permit renewal effectively deprives us of our livelihood and how to pay bills and support our family, as we have done with our waste treatment and disposal business for the past 30 years of our lives.

### **Any suggested terms or conditions?**

Allow us the opportunity to proceed with the process of permit renewal.

### **Why should your request be granted?**

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.



## **Contested Issue 6:**

### **Contested Issue and Location of the Issue**

Whether or not it was accurate and truthful for Ms. Carpenter to say, in her letter of 9/15/23, that SWI had been keeping little documentation of waste tracking.

\*\*See the accompanying document titled "Dispute Resolution Decision\_2023Sept15".

### **Explanation and reasons the contested issue is relevant to the decision**

The DEC Letter of 1/2/24 indicates that a history of noncompliance with the permit is part of the reason to stop the process of permit renewal.

\*\*See the accompanying documents titled "Informal Review Decision\_2024Jan12" and "Permit Denial\_2024Jan2".

### **How are requesters directly and substantially affected?**

The stopping of the processing of permit renewal effectively deprives us of our livelihood and how to pay bills and support our family, as we have done with our waste treatment and disposal business for the past 30 years of our lives.

### **Any suggested terms or conditions?**

Allow us the opportunity to proceed with the process of permit renewal.

### **Why should your request be granted?**

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.

## **Contested Issue 7:**

### **Contested Issue and Location of the Issue**

Whether or not it was accurate and truthful for Ms. Kazakova to say the following, in her Letter of 10/13/23:

**\*\*See document titled "DOL Letter\_2023Oct13"**

Regarding Signage, the only response to the DEC Letter of 5/17/23 was an objection to posting signs at the entrance gate.

**\*\*See documents titled "Second Set of Responses to ADEC Letter of 5-17-23" and "COBC Corrective Actions\_2023May31".**

Regarding Access Control, no additional submissions were received after the initial submission of 5/8/23.

**\*\*See documents titled "Second Set of Responses to ADEC Letter of 5-17-23".**

Regarding Waste Manifests, there was a violation for August because the monthly submission showed no landfill disposal during the month.

**\*\*See document titled "COBC\_2023April5".**

Regarding Leakproof Secondary Containment for Storage Truck, the only response to the DEC Letter of 5/17/23 was that concerns about leakage from the trucks were overblown, unreasonable, and unnecessary.

**\*\*See documents titled "Second Set of Responses to ADEC Letter of 5-17-23" and "COBC Corrective Actions\_2023May31".**

Regarding Leakproof Secondary Containment for Treatment Building Floor, the Oliver's response to the DEC Letter of 5/17/23 was stated as follows "the Olivers certainly did submit an initial plan.....there appears to be no good reason for ADEC's hasty-like demand for submittal of final plan.

**\*\*See documents titled "Response to ADEC Email of 5-15-23" and "Second Set of Responses to ADEC Letter of 5-17-23".**

Regarding Monthly Testing, the deadline of 6/30/23 to submit a revised plan was not met.

**\*\*See document titled "COBC Corrective Actions\_2023May31".**

Regarding Visual Monitoring, SWI did not resubmit a revised form that made all the changes required by ADEC. Instead, on May 9, 2023, as part of their monthly submission, SWI submitted much the same form it had previously submitted with several revisions that it deemed “applicable”. Because SWI did not make the changes required by ADEC, it violated paragraph 39 of the COBC.

\*\*See document titled “Second Set of Responses to ADEC Letter of 5-17-23”.

Regarding Site Plan, SWI’s only response to requests for revision were refusal to modify the plan it had previously submitted.

\*\*See document titled “Second Set of Responses to ADEC Letter of 5-17-23”.

Regarding Waste Storage in Non-modified Trucks, during the inspections on June 6, 2023 and September 13, 2023, two of the trucks on the property contained waste and had not been modified to contain leaks, which is a violation of paragraph 30 of the COBC.

\*\*See document titled “COBC Corrective Actions\_2023May31”.

### **Explanation and reasons the contested issue is relevant to the decision**

The DEC Letter of 1/2/24 indicates that a history of noncompliance with the COBC is part of the reason to stop the process of permit renewal.

\*\*See the accompanying document titled “Permit Denial\_2024Jan2”.

### **How are requesters directly and substantially affected?**

The stopping of the processing of permit renewal effectively deprives us of our livelihood and how to pay bills and support our family, as we have done with our waste treatment and disposal business for the past 30 years of our lives.

### **Any suggested terms or conditions?**

Allow us the opportunity to proceed with the process of permit renewal.

### **Why should your request be granted?**

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a “mom and pop” entity out of business, with no due process.

## **Contested Issue 8:**

### **Contested Issue and Location of the Issue**

In consideration of 18 AAC 60.200(d), whether activities during the time of collection and/or transportation of medical waste lie within or outside the scope of permitting for a Medical Waste Treatment Facility. If within, then how would that represent fair and equal application of regulations regarding all people transporting medical waste.

18 AAC 60.200(d) states that a permit or authorization is not required for a person who transports solid waste to an approved facility.

\*\*See the accompanying document titled "Permit Denial\_2024Jan2".

### **Explanation and reasons the contested issue is relevant to the decision**

The DEC Letter of 1/2/24 includes a directive stating "SWI may no longer accept or treat medical waste at its facility after January 17, 2024." This directive is written with ambiguity and allows the DEC to enforce this directive under the pretext that we can no longer accept medical waste, whatsoever, after January 17, 2024.

### **How are requesters directly and substantially affected?**

Being no longer able to accept medical waste, whatsoever, will deny us the opportunity to use a "backup treatment facility" during the time of processing of permit renewal and will cause irreparable harm to customer relations and contractual obligations.

### **Any suggested terms or conditions?**

To remove regulatory ambiguity and provide certainty regarding the handling of medical waste during the time of collection and/or transportation.

To remove ambiguity and provide certainty regarding the directive of 1/2/24.

### **Why should your request be granted?**

To uphold Article 1, Section 1 and Section 7 of the Alaska Constitution and provide due process before irreparable harm is done to our business.

## **Contested Issue 9:**

### **Contested Issue and Location of the Issue**

In consideration of the State's definition for "medical waste", whether the handling of waste pharmaceuticals lies within or outside the scope of regulations for a Medical Waste Treatment Facility. If within, then how does that represent fair and equal application of regulations regarding the handling of different types of waste.

\*\*See the accompanying document titled "Medical Waste Definition".

### **Explanation and reasons the contested issue is relevant to the decision**

The DEC Letter of 1/2/24 includes a directive specifying how we must handle waste pharmaceuticals.

\*\*See the accompanying document titled "Permit Denial\_2024Jan2".

### **How are requesters directly and substantially affected?**

This directive will deny us the ability to fulfill our contractual obligation and incinerate the waste pharmaceuticals.

### **Any suggested terms or conditions?**

To remove regulatory ambiguity and provide certainty regarding handling of waste pharmaceuticals. To remove regulatory ambiguity and provide certainty regarding approvals needed for replacement of our incinerator. To implement a fair and prompt process for obtaining any needed approvals.

### **Why should your request be granted?**

To uphold Article 1, Section 1 and Section 7 of the Alaska Constitution and provide due process before the DEC pursues the act of impairing a contractual obligation, as prohibited by Article 1, Section 15 of the Alaska Constitution.